

Message Text

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ORIGIN TRSE-00

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LAB-04 NSAE-00 NSC-05 PA-02 AID-05 CIEP-02 SS-15

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FM SECSTATE WASHDC

TO AMEMBASSY PORT OF SPAIN

UNCLAS STATE 085787

E.O. 11652: N/A

TAGS: ETRD

SUBJECT: GSP IMPLEMENTATION; "SUBSTANTIALLY TRANSFORMED"

REF: PORT OF SPAIN 00311

1. THE U.S. CUSTOMS SERVICE HAS ISSUED A RULING
(TD 76-100) INTERPRETING THE TERM "SUBSTANTIALLY TRANS-
FORMED," AS USED IN CFR PART 10, PARA 10.177 (A)(2),
REGARDING GSP ELIGIBILITY FOR ARTICLES IMPORTED INTO THE
U.S. FROM BENEFICIARY DEVELOPING COUNTRIES. FULL TEXT
SEPTEL.

2. SECTION 10.177 OF THE CUSTOMS REGULATIONS DEFINES THE
WORDS "PRODUCED IN THE BENEFICIARY DEVELOPING COUNTRY"
AS USED IN SECTION 503 OF THE TRADE ACT OF 1974. THE
REGULATION PROVIDES THAT THE COST OR VALUE OF THOSE
CONSTITUENT MATERIALS WHICH HAVE BEEN SUBSTANTIALLY
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TRANSFORMED INTO A NEW AND DIFFERENT ARTICLE OF COMMERCE

IN THE BENEFICIARY DEVELOPING COUNTRY SHALL BE INCLUDED
IN THE COMPUTATION OF THE 35 PERCENT CRITERIOR FOR GSP.

3. A MANUFACTURING PROCESS WHICH CANGES AN ITEM FROM ONE BTN
CLASSIFICATION TO ANOTHER DOES NOT CONSTITUTE SUBSTANTIAL
TRANSFORMATION UNDER THE U.S. CUSTOMS REGULATIONS AND
WOULD THEREFORE NOT NECESSARILY QUALIFY A PRODUCT FOR GSP
TREATMENT UNDER THE U.S. SCHEME. THE CUSTOMS RULING STATES
THAT QUOTE MATERIALS PROCESSED INTO CERTAIN ARTICLES MAY
BE CONSIDERED SUBSTANTIALLY TRANSFORMED CONSTITUENT MATERIALS
UNQUOTE. THE CUSTOMS RULING SPECIFICALLY CITES THE MANUFACTURE
OF GOLD JEWELRY FROM IMPORTED GOLD BARS AS AN EXAMPLE OF
SUBSTANTIAL TRANSFORMATION. IT STATES THAT QUOTE GOLD BARS
WHICH ARE IMPORTED INTO A BENEFICIARY DEVELOPING COUNTRY ARE
CAST INTO MOUNTINGS--RINGS IN WHICH A STONE IS NOT YET SET.
SUCH MOUNTINGS ARE SUBSTANTIALLY TRANSFORMED CONSTITUENT
MATERIALS OF THE ELIGIBLE ARTICLES OF JEWELRY WHEN THOSE
MOUNTINGS BECOME CONSTITUENT ELEMENTS OF A RING MOUNTED
WITH A PRECIOUS STONE OF THE BENEFICIARY DEVELOPING
COUNTRY AND THEN EXPORTED DIRECTLY FROM THAT BENEFICIARY
DEVELOPING COUNTRY UNQUOTE.

4. IT IS NOT EVIDENT FROM REFTEL THAT THE 42 PERCENT
LOCAL VALUE ADDED WOULD QUALIFY UNDER THE CRITERIA
SET FORTH IN THE CUSTOMS REGULATIONS. SOME COSTS
INCLUDED IN LOCAL ASSESSMENT MAY NOT ALL BE INCLUDED UNDER
OUR CRITERIA.

5. HOWEVER, ARTICLES PRODUCED BY THE JOINING AND FITTING
TOGETHER OF COMPONENTS ARE NOT CONSIDERED SUBSTANTIALLY
TRANSFORMED CONSTITUENT MATERIALS. ARTICLES OF THIS KIND
MAY WELL HAVE BEEN SUBSTANTIALLY TRANSFORMED, BUT THEY
ARE NOT PRODUCED FROM SUBSTANTIALLY TRANSFORMED CON-
STITUENT MATERIALS. UNDER THIS CRITERION, PARTIALLY
COMPLETED COMPONENTS WHICH ARE COMPLETED AND ASSEMBLED
IN THE BENEFICIARY DEVELOPING COUNTRY INTO FINISHED
ARTICLES OR COMPONENTS DO NOT QUALIFY AS SUBSTANTIALLY
TRANSFORMED CONSTITUENT MATERIALS. BY THE SAME TOKEN,
MOST ASSEMBLY OPERATIONS AND OPERATIONS INCIDENTAL TO
ASSEMBLY WILL NOT QUALIFY.

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6 6. THE EXAMPLES PRESENTED HERE ARE ILLUSTRATIVE ONLY.
MORE SPECIFIC INTERPRETATIONS OF THE TERM "MATERIALS"
REGARDING SUBSTANTIAL TRANSFORMATION AND OF AN ARTICLE'S
QUALIFICATION UNDER THE 35 PERCENT CRITERION SHOULD BE
REQUESTED BY INTERESTED PARTIES IN ACCORDANCE WITH
PART 177 OF THE CUSTOMS REGULATIONS (19 CFR PART 177).
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